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Attorneys for Plaintiff
Tessa Kennedy

UNITED STATES DISTRICT COURT
Southern District of New York

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TESSA KENNEDY, : Civil Action No.
 : 07 Civ. 7766 (NRB) (KNF)
 Plaintiff, :
 :
 -against- : **AFFIRMATION IN SUPPORT
 OF PLAINTIFF'S MOTION
 FOR SUMMARY JUDGMENT
 DISMISSING DEFENDANT'S
 COUNTERCLAIMS**
KENNETH J. ROBERTS, :
 :
 Defendant. :
 :
 - - - - - x

Sandra Gale Behrle, pursuant to 28 U.S.C. § 1746, states:

1. I make this Affirmation in support of plaintiff Tessa Kennedy's motion to dismiss the counterclaims interposed by defendant Kenneth J. Roberts. They are time barred. Roberts paid an alleged obligation of plaintiff's which he guaranteed. A cause of action for indemnity accrues upon payment. Payment was made complete in 1999. The six-year Statute of Limitations controls and has run. Please see accompanying Memorandum of Law.

2. This Affirmation assembles and identifies documents in support of the motion. Each of the documents, except one, is a

true copy of a document produced by defendant. The one exception is Exhibit 3, a schedule prepared by us of the payments made as shown by the documents produced.

3. On or about December 12, 1992, plaintiff, by her attorney-in-fact Cassian Elwes, executed a Mortgage Loan Note ("Note") in the amount of \$600,000.00, together with a Mortgage ("Mortgage"). Exhibit 1.

4. On or about the same date, defendant signed a Guaranty which guaranteed the obligations under the Note. Exhibit 2.

5. On January 20, 1993, defendant commenced monthly payments on the Note in accordance with its terms. Exhibit 3 is a schedule of those payments. Exhibit 4 is a random sample of copies of the monthly checks used to create Exhibit 3 with the communications from or on behalf of defendant to the lender/mortgagee.

6. On or about January 26, 1999, the final payment on the Note was made by defendant. See Exhibits 3 and 4.

7. On or about March 26, 1999, the lender/mortgagee assigned to defendant its interest in the mortgage. Exhibit 5.

8. Thereafter defendant used the mortgage and made further assignments for his benefit. Exhibit 6.

9. After the commencement of this litigation in August 2007, on or about October 19, 2007, defendant further assigned the Mortgage to Bloomfield Estates LLC, a holding company for defendant's personal residence. Exhibit 7. On November 5, 2007, defendant commenced a Chapter 11 bankruptcy for Bloomfield Estates.

10. At no time after the payment in full of the original Note did plaintiff acknowledge a debt to defendant in writing or make partial payment of an alleged debt to defendant.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: April 30, 2008



Sandra Gale Behrle (4652)